

**Exhibit I**  
**Part 1**

1 THIS TRANSCRIPT CONTAINS 133 PAGES  
2 NUMBERED 1 THROUGH 133  
3

4 DRAFT  
5 FOR REVIEW AND CORRECTION PURPOSES ONLY  
6

7 STATE OF CONNECTICUT  
8 DEPARTMENT OF PUBLIC UTILITY CONTROL  
9

10 Docket No. 03-01-02

11 Petition of Gemini Networks Connecticut,  
12 Incorporated for Declaratory Ruling Regarding  
13 Southern New England Telephone Company's  
14 Unbundled Network Elements  
15

16 Oral Arguments held at the Department of  
17 Public Utility Control, 10 Franklin Square,  
18 New Britain, Connecticut, on December 10,  
19 2003, beginning at 11:05 o'clock a.m.  
20

21 H e l d B e f o r e:

22 The Hon. JACK R. GOLDBERG, Chairperson

23 The Hon. DONALD DOWNES, Commissioner  
24  
25

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1 Appearances:  
 2 For Southern New England Telephone  
 3 Company:  
 4 SBC SOUTHERN NEW ENGLAND TELEPHONE  
 5 COMPANY  
 6 310 Orange Street  
 7 New Haven, Connecticut 06510  
 8 By: GEORGE MOREIRA, ESQ.  
 9 PEGGY GARBER, ESQ.  
 10  
 11 Also present for SBC/SNET:  
 12 JOHN ANDRASIK  
 13  
 14 For Gemini Network, Inc:  
 15 MURTHA, CULLINA, LLP.  
 16 CityPlace I  
 17 185 Asylum Street  
 18 Hartford, Connecticut 06103-3469  
 19 By: JENNIFER D. JANELLE, ESQ.  
 20 DWIGHT JOHNSON, ESQ.  
 21  
 22 For the Office of Consumer Counsel:  
 23 WILLIAM VALLEE, ESQ.  
 24  
 25

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1 Appearances (Cont'd.):  
 2 For the Office of the Attorney General:  
 3 JOHN WRIGHT, ESQ.  
 4 Assistant Attorney General  
 5  
 6  
 7  
 8  
 9  
 10  
 11  
 12  
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1 THE CHAIRPERSON: Good  
 2 morning. We're here this morning for oral  
 3 arguments on Docket 03-01-02, Petition of  
 4 Gemini Networks Connecticut, Incorporated,  
 5 for Declaratory Ruling Regarding Southern New  
 6 England Telephone Company's Unbundled Network  
 7 Elements.  
 8 I'm Commissioner Jack  
 9 Goldberg, Chairman of this panel. With me is  
 10 the Chairman of the agency, Donald Downes.  
 11 Commissioner Jack Betkoski, the third member  
 12 of this panel cannot be here today and will  
 13 review the transcript once it is available.  
 14 Can I have appearances?  
 15 MR. MOREIRA: George Moreira  
 16 and Peggy Garber for the Southern New England  
 17 Telephone Company, Commissioners.  
 18 MS. JANELLE: I'm Jennifer  
 19 Janelle, this is Dwight Johnson, from Murtha  
 20 Cullina on behalf of Gemini Networks  
 21 Connecticut. We also have Rich Rollinson  
 22 from Gemini Networks with us.  
 23 THE CHAIRPERSON: Thank you.  
 24 MR. VALLEE: William Vallee  
 25 for the Office of Consumer Counsel.

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1 MR. WRIGHT: Good morning,  
 2 Commissioners. John Wright on behalf of the  
 3 Attorney General.  
 4 THE CHAIRPERSON: Further  
 5 appearances? Seeing none, Attorney Moreira.  
 6 MR. MOREIRA: Thank you,  
 7 Commissioner.  
 8  
 9 THE CHAIRPERSON: Let it rip.  
 10 MR. MOREIRA: Good morning,  
 11 Commissioners, and thank you for giving us  
 12 this opportunity to address the Department's  
 13 decision in this docket where the Department  
 14 has agreed with Gemini and ordered the  
 15 unbundling of the telco's remaining coaxial  
 16 facilities which, as you can tell from our  
 17 written exceptions, we are disappointed with,  
 18 and we really do believe that the draft  
 19 decision does not comport with state or  
 20 federal law, and I will address those points  
 21 in turn through my oral argument, but at  
 22 first I'd like to do a little brief  
 23 background just to give you context of what  
 24 we're talking about, what the facilities are  
 25 and how they relate to this very critical

<p style="text-align: right;">Page 6</p> <p>1 docket.</p> <p>2       As you guys all know, I like</p> <p>3 to draw. Here we go, State of Connecticut,</p> <p>4 start simple. In blue will generally be our</p> <p>5 copper-based network, what is unbundled</p> <p>6 throughout the State of Connecticut, which is</p> <p>7 made up of numerous central offices</p> <p>8 throughout the state, interconnected through</p> <p>9 with fiber and copper, and I'm not going to</p> <p>10 put all hundred or so central offices that</p> <p>11 are out there, but that's what it generally</p> <p>12 would look like.</p> <p>13       Off of the central office,</p> <p>14 which is really what we're kind of talking</p> <p>15 about in this docket, is a loop or a</p> <p>16 quasi-loop. In our network, which is</p> <p>17 currently unbundled -- I'll make the central</p> <p>18 office bigger -- there's a main distribution</p> <p>19 frame inside that office. From there, there</p> <p>20 are copper pairs that will run out to various</p> <p>21 people's homes, and you have, in our network,</p> <p>22 a dedicated copper pair that goes to your</p> <p>23 house. So you have a copper pair, I have a</p> <p>24 copper pair. We each have our own individual</p> <p>25 copper pair.</p>	<p style="text-align: right;">Page 8</p> <p>1 underground conduit, as it may be, depending</p> <p>2 on the given area of the state, that you'll</p> <p>3 have roughly 3100 miles of co-ax. Those are</p> <p>4 the facilities that Gemini would like</p> <p>5 unbundled in this case and that you have</p> <p>6 tentatively ordered be unbundled.</p> <p>7       These facilities differ from</p> <p>8 our copper-based network. Think of it as an</p> <p>9 Apple computer and an IBM computer, different</p> <p>10 platform altogether.</p> <p>11       This platform is a shared</p> <p>12 network. What do I mean by "shared"? You</p> <p>13 don't have a dedicated copper twisted pair</p> <p>14 that goes to your house, Commissioner, and</p> <p>15 then I have a separate one that goes to my</p> <p>16 house. Think of a big tube of which we all</p> <p>17 connect into, and that is a shared platform.</p> <p>18       Ours, on the other hand, has</p> <p>19 a dedicated twisted pair that goes from point</p> <p>20 to point.</p> <p>21       In addition, this red that's</p> <p>22 throughout the state, that was paid for</p> <p>23 solely by the shareholders of SNET/SBC. In</p> <p>24 Docket 00-08-14 the Department let us close</p> <p>25 down SPV. We took all the SPV assets off our</p>
<p style="text-align: right;">Page 7</p> <p>1       This network is unbundled</p> <p>2 according to state and federal law. It's</p> <p>3 priced at TSLRIC, so if any given company</p> <p>4 comes and they want to purchase, maybe</p> <p>5 transport between two central offices, you</p> <p>6 can get that at UNE prices. If you win a</p> <p>7 customer and you want to get a loop to</p> <p>8 someone's home, maybe Mrs. Smith up here in</p> <p>9 Litchfield, you want that loop, you can get</p> <p>10 that at unbundled pricing and that goes along</p> <p>11 with switching and whatever other components</p> <p>12 of our network that are required to be</p> <p>13 unbundled. That's our network. That's also a</p> <p>14 circuit-switched dedicated network.</p> <p>15       Now, the facilities</p> <p>16 we're talking about here today were</p> <p>17 facilities that were used by SPV, our cable</p> <p>18 company that is now defunct, that are out on</p> <p>19 poles throughout the state of Connecticut at</p> <p>20 different points on this -- throughout the</p> <p>21 state.</p> <p>22       They do not go to the main</p> <p>23 distribution frame. They are not connected</p> <p>24 to our network. They are not part of our</p> <p>25 network. It's basically from pole to pole or</p>	<p style="text-align: right;">Page 9</p> <p>1 books, took the loss to the shareholders.</p> <p>2 And we've complied with that disposition work</p> <p>3 because we have sold the video pieces that we</p> <p>4 could sell. There still are some amplifiers</p> <p>5 and optical nodes out on this network.</p> <p>6       Currently -- and I just</p> <p>7 misspoke -- it's not even a network. It's</p> <p>8 pieces of a network. Because you'll have a</p> <p>9 piece here, you'll have a piece here. Even</p> <p>10 if it's mostly connected, there's no lights</p> <p>11 on. When you think of your fiber optic now,</p> <p>12 you turn the light on and you follow it</p> <p>13 throughout the whole state. You think, Oh,</p> <p>14 boy, we've got a network. If you went to a</p> <p>15 NOC and you looked at it, it's not even a</p> <p>16 network. We just have our pieces of co-ax up</p> <p>17 on poles, generally speaking. That's the</p> <p>18 stuff we're talking about here that is being</p> <p>19 requested to be unbundled.</p> <p>20       I kind of wanted to lay that</p> <p>21 framework to show the differences between</p> <p>22 what we're talking about here. I will be</p> <p>23 referring to that throughout the hearing.</p> <p>24       COMM. DOWNES: Counselor --</p> <p>25       MR. MOREIRA: Sure.</p>

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1           COMM. DOWNES: -- let's  
2 return to the part about the shareholders for  
3 just a minute here, and I defer, of course,  
4 to my expert colleague, but I was under the  
5 impression that the SPV system originally was  
6 built by SNET with contributions from  
7 ratepayers. No?

8           MR. MOREIRA: No. The intent  
9 of HFC, as we know it, that network, was at  
10 some point to replace the copper network, and  
11 we would have been all HFC throughout the  
12 whole state of Connecticut.

13           COMM. DOWNES: I'm with you.

14           MR. MOREIRA: And so at that  
15 point -- and this all really started really  
16 post rate of return, we became all reg as  
17 this was all proceeding --

18           COMM. DOWNES: Yes.

19           MR. MOREIRA -- so there is no  
20 really ratepayer place to get the money from.  
21 So as this starts being built in the mid 90s,  
22 just as we're getting into all reg, and we've  
23 been in all reg now probably eight years or  
24 so, since the mid '90s, so there really is no  
25 ratepayer place to go from, and then at the

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1 end of the day it didn't matter because the  
2 loss was supposed to be borne by the  
3 shareholders. And that is more of an aside.  
4 It's not a central piece to the argument.  
5 But there were arguments raised that, hey,  
6 the ratepayers paid for this and therefore it  
7 is a community good that should be out there.

8           COMM. DOWNES: Yes.

9           MR. MOREIRA: So that's more  
10 of an aside to the overall argument --

11           COMM. DOWNES: I understand.

12           MR. MOREIRA: -- as opposed  
13 to some of the arguments that we raise in the  
14 written exceptions.

15           COMM. DOWNES: I appreciate  
16 that.

17           MR. MOREIRA: Because it  
18 wasn't really addressed in the draft  
19 decision, but it is a critical element.

20           COMM. DOWNES: Let me pursue  
21 a little different piece. You were  
22 explaining that what's left now isn't really  
23 a network, it's pieces of a network. It's  
24 some disconnected segments of various kinds.

25           MR. MOREIRA: Generally

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1 speaking, yes.

2           COMM. DOWNES: Has -- has  
3 SBC -- I understand you've written off the  
4 loss, and so forth. Has SBC contemplated any  
5 other use for this? I mean, was this  
6 literally a matter of just leaving it on the  
7 poles and, in effect, abandoning it, if you  
8 will?

9           MR. MOREIRA: In essence, it  
10 is abandoned in the sense that it's not going  
11 to be used. We don't have any future plans  
12 for it, but the only plan that we've had for  
13 it is to sell it. So if anybody wants it,  
14 they can buy it from us at a fair market  
15 value price as negotiated. Because that's  
16 how the Gemini whole thing started.

17           COMM. DOWNES: I see.

18           MR. MOREIRA: We actually  
19 were negotiating at one point. We made a,  
20 hey, you want to buy it for "X" dollars?  
21 They never responded and then came to you for  
22 unbundling.

23           COMM. DOWNES: Okay.

24           MR. MOREIRA: So if there's  
25 an investor out there that would like to buy

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1 the co-ax plant that's out there, give us a  
2 call.

3           COMM. DOWNES: Okay. And  
4 last question, and then I promise I'll let  
5 you finish your presentation.

6           As I understand -- as I  
7 understand the proposal that's in front of us  
8 at the moment here, Gemini would, in effect,  
9 be -- be either buying or leasing this  
10 property. I mean, they're making -- their  
11 proposal would be to make a payment to SBC  
12 and -- as I understood it. Why don't we try  
13 it the other way.

14           Please explain to me what we  
15 think, at least your understanding of the  
16 deal, would be. How about that?

17           MR. MOREIRA: My  
18 understanding of the deal currently, based on  
19 the draft decision, is that the Department  
20 said, SNET, you're wrong, this is subject to  
21 unbundling rules. We have the jurisdictional  
22 authority to unbundle it.

23           COMM. DOWNES: Right.

24           MR. MOREIRA: Gemini meets  
25 the impairment standard; therefore, they're

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1 entitled to unbundled access, which means  
 2 they're entitled to access to those  
 3 facilities at TSLRIC pricing, which would be  
 4 leasing it at UNE pricing, TSLRIC, which is a  
 5 cost-plus type pricing. Go ahead, comply  
 6 with this order, put some cost studies  
 7 together, and as they lease a piece, you will  
 8 charge them, I don't know --  
 9 COMM. DOWNES: Yes.  
 10 MR. MOREIRA: I don't know  
 11 how to do it, but let's assume we did, you  
 12 know, ten dollars, you know, per whatever.  
 13 COMM. DOWNES: I understand.  
 14 Okay.  
 15 Now, your point a little bit  
 16 earlier also was that this is a shared  
 17 network as opposed to the -- well, I'm not  
 18 sure what the alternative form was.  
 19 MR. MOREIRA: Dedicated  
 20 circuit switch network.  
 21 COMM. DOWNES: Thank you.  
 22 Now, is one of the  
 23 implications of that that another company or  
 24 companies like Gemini could come along and  
 25 say, Well, gee, that sounds like an

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1 interesting idea, we'd like to also use that  
 2 ourselves, and then they would also be  
 3 obligated to make payments to you by way of  
 4 access charges, lease, however you  
 5 characterize it. Is that a fair rendition?  
 6 MR. MOREIRA: That is a fair  
 7 rendition as to what other companies could  
 8 do. Once you make it a UNE, I have to make  
 9 it available on a nondiscriminatory basis to  
 10 anybody who wants it. Similar to my network  
 11 that we already have existing here -- and I'm  
 12 calling it mine, it's not really mine -- this  
 13 network, anyone can come and order, any CLEC  
 14 can order a given component of it if they've  
 15 won that given customer. They can order a  
 16 piece of it.  
 17 COMM. DOWNES: I get it.  
 18 MR. MOREIRA: The problem with  
 19 this one, no one knows how to unbundle it,  
 20 presuming it is subject to unbundling. No  
 21 one has come up with an OSS system as far as  
 22 we know which allows, you know, Commissioner  
 23 Downes' corporation to order this piece of  
 24 the network and then Gemini to order that  
 25 piece, and then Cox to order a different

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1 piece, and then AT&T to order a different  
 2 piece, because it's a different platform.  
 3 It's, like I said, an Apple versus an IBM.  
 4 For us, when we say two million lines, there  
 5 literally are two million little lines out  
 6 there that go to everybody's home, and at  
 7 some point may get aggregated certainly on  
 8 the transport side, but on the loop side you  
 9 literally have two million little lines.  
 10 There you have, instead of  
 11 having your own personal driveway, you have  
 12 an on ramp that puts you on a bigger highway,  
 13 and we don't know how, which is part of our  
 14 argument that will be coming up, we've kind  
 15 of jumped ahead, but generally speaking we  
 16 don't know how to break that up to say, okay,  
 17 this company gets this piece, this company  
 18 gets that piece, this company gets that  
 19 piece.  
 20 Gemini, I think, would argue,  
 21 Hey, you missed the boat, Moreira. We want  
 22 to unbundle the whole thing because we'll  
 23 just rent the whole thing from you.  
 24 Presuming that's even an element, which I  
 25 would disagree, but that's --

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1 COMM. DOWNES: I understand.  
 2 MR. MOREIRA: I think that's  
 3 their argument.  
 4 COMM. DOWNES: I'm just  
 5 trying to explore the hypothetical here. And  
 6 final point, and if I understood -- if I  
 7 misunderstood you, I apologize, but I think  
 8 what you were trying to say to me was that  
 9 for anybody to use this, this set of  
 10 facilities, whether it's Gemini or anybody  
 11 else, they will have to have some sort of an  
 12 interface that allows them to connect this to  
 13 the rest of the system, if you will. Right?  
 14 MR. MOREIRA: Absolutely, for  
 15 their system, because Gemini doesn't want to  
 16 use any of the blue. They only want the red  
 17 and then connect it to their facilities.  
 18 COMM. DOWNES: I see.  
 19 MR. MOREIRA: Whoever uses it  
 20 for whatever purpose, whether you want to use  
 21 it for telecommunications, for cable modem  
 22 service, which is the kind of company that  
 23 Gemini is, for whatever type, voiceover IP,  
 24 you're going to have to put whatever network  
 25 equipment necessary to make that happen and

5 (Pages 14 to 17)

<p style="text-align: right;">Page 18</p> <p>1 then connect it. That's not to say --</p> <p>2 COMM. DOWNES: And that's</p> <p>3 what you meant by the OSS?</p> <p>4 MR. MOREIRA: No, no. That's</p> <p>5 separate from the OSS. The OSS is an</p> <p>6 operator support services --</p> <p>7 COMM. DOWNES: The financial</p> <p>8 and the billing piece of it?</p> <p>9 MR. MOREIRA: It's the</p> <p>10 billing and the service piece of it where</p> <p>11 everyone would go to order it.</p> <p>12 COMM. DOWNES: I get it.</p> <p>13 MR. MOREIRA: That's what the</p> <p>14 OSS is. This is the equipment that makes it</p> <p>15 work. Like anything, I could have a copper</p> <p>16 spool sitting right here. It's capable for</p> <p>17 telecommunications but until I hook it up to</p> <p>18 something, until I have the electronics --</p> <p>19 COMM. DOWNES: Right. So</p> <p>20 they really need two things. They need the</p> <p>21 physical interface, and they also need the</p> <p>22 OSS, the financial and operations.</p> <p>23 MR. MOREIRA: That's</p> <p>24 correct. And to be fair to Gemini, they said</p> <p>25 we'll provide all that stuff to make it work,</p>	<p style="text-align: right;">Page 20</p> <p>1 capability test that the FCC has, the</p> <p>2 Department at the bottom of page 36 makes</p> <p>3 this very critical finding. It says: "The</p> <p>4 Department also finds that based on</p> <p>5 47-USC-153, subsection 29, the HFC meets the</p> <p>6 definition of network element and therefore</p> <p>7 must be unbundled."</p> <p>8 We posit that that is an</p> <p>9 incorrect application of law because if you</p> <p>10 take a look at 47-153-29, of which may I</p> <p>11 approach, I have copies for everybody --</p> <p>12 COMM. DOWNES: Yes.</p> <p>13 MR. MOREIRA: -- which I've</p> <p>14 highlighted --</p> <p>15 COMM. DOWNES: Thank you,</p> <p>16 sir.</p> <p>17 MR. MOREIRA: -- you also</p> <p>18 have to look at.</p> <p>19 COMM. DOWNES: Now that's</p> <p>20 large enough so that I can read it.</p> <p>21 MR. MOREIRA: I made it as</p> <p>22 big as possible.</p> <p>23 If you take a look at 29, it</p> <p>24 says: "The term 'network element' means a</p> <p>25 facility or equipment used in the permission</p>
<p style="text-align: right;">Page 19</p> <p>1 and if there's a piece that isn't connected,</p> <p>2 we'll connect it.</p> <p>3 COMM. DOWNES: I get it.</p> <p>4 MR. MOREIRA: That's what</p> <p>5 they were saying.</p> <p>6 COMM. DOWNES: Thank you,</p> <p>7 sir. I appreciate it. Sorry to knock you</p> <p>8 off course.</p> <p>9 MR. MOREIRA: No problem. So</p> <p>10 with that context, our first main argument as</p> <p>11 to why the draft decision is in error as a</p> <p>12 matter of law is that the Department has</p> <p>13 found in this draft decision that these</p> <p>14 coaxial facilities constitute a network</p> <p>15 element, which is the first step in any</p> <p>16 unbundling analysis.</p> <p>17 On page 36 of the draft</p> <p>18 decision, which I would like to bring</p> <p>19 copies -- may I approach, Commissioners?</p> <p>20 COMM. DOWNES: Sure.</p> <p>21 MR. MOREIRA: I've attached</p> <p>22 pages 35 and 36. If you go on the second</p> <p>23 page, the bottom of page 36, I have it</p> <p>24 highlighted.</p> <p>25 After discussing the</p>	<p style="text-align: right;">Page 21</p> <p>1 of telecommunications service." Well, then</p> <p>2 what is a telecommunication service? You</p> <p>3 have to look at 46, which is on your next</p> <p>4 page, which is basically defined the offering</p> <p>5 of telecommunications for a fee directly to</p> <p>6 the public or indirectly to the public,</p> <p>7 basically is what it says.</p> <p>8 COMM. DOWNES: Uh-huh.</p> <p>9 MR. MOREIRA: If you put</p> <p>10 those two together, basically to be a network</p> <p>11 element this piece of equipment has to be</p> <p>12 used to provide telecommunications for a fee</p> <p>13 to the public.</p> <p>14 Just on the statutory</p> <p>15 threshold, this equipment does not meet that</p> <p>16 definition in any way whatsoever. Those</p> <p>17 little red pieces out there were only used</p> <p>18 for -- when they even were working -- were</p> <p>19 only used for CATV services. They were never</p> <p>20 used, never equipped to provide</p> <p>21 telecommunications, never.</p> <p>22 Let's just say you say, Well,</p> <p>23 George, I still think it meets that statutory</p> <p>24 framework. The FCC for sure has spoken on</p> <p>25 this; they've interpreted this meaning of</p>

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1 network element. And they have. If you look  
 2 in the TRO order, which is the triennial  
 3 review order -- again, may I approach?  
 4 COMM. DOWNES: Yes.  
 5 MR. MOREIRA: -- paragraphs  
 6 56 through 60 of the triennial review  
 7 order -- I only give you 56 because it hits  
 8 the point very succinctly -- they conclude in  
 9 defining or interpreting 153-29 that a  
 10 network element refers -- and there's two  
 11 pieces to it -- an element of the incumbent  
 12 LEC's network that is capable of being used  
 13 to provide a telecommunications service.  
 14 Thus, under the FCC test, there's two pieces.  
 15 Just as a threshold matter to even define it  
 16 as a network element, it's got to be part of  
 17 the telecommunication -- my network, the  
 18 incumbent's network, number one; and then  
 19 number two, it has to meet the FCC's  
 20 capability test which is further defined. It  
 21 has to be capable of providing  
 22 telecommunications services.  
 23 If, as you take a look, as  
 24 I've proffered earlier, it is not part of my  
 25 network; it cannot be unbundled. Currently

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1 there is no evidence before this Department  
 2 that indicates in any way that the coaxial  
 3 facilities that are on those poles are  
 4 connected to my network. That goes as to the  
 5 first piece. It's not part of my network in  
 6 any way. I don't use it. I can't use it. I  
 7 can't turn it on. There's nothing I can do  
 8 with it. It's just out there, an inanimate  
 9 object.  
 10 As to the second piece, which  
 11 is the FCC's capability test, and the FCC put  
 12 this capability test in and you guys discuss  
 13 it at length in the draft decision, not to  
 14 address this specific situation, but they put  
 15 it in to address areas where you have spare  
 16 facilities that are part of your network but  
 17 may not actually be in use. For instance,  
 18 the ILECs had argued that dark fiber was not  
 19 a UNE because it was not actually in use at  
 20 the time, dark fiber being a piece of fiber  
 21 that has no equipment on it, but I can do  
 22 that pretty quickly. We had argued, Hey,  
 23 that's not actually in use; it's not a UNE.  
 24 FCC said, oh, no, I've got this capability  
 25 test. As long as it's capable of carrying

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1 telecommunications, it's connected to your  
 2 network and it's easily called into service,  
 3 if it meets those standards, then it is  
 4 subject to unbundling.  
 5 Is it connected to your  
 6 network and easily called into service? And  
 7 that is right in your own draft decision on  
 8 page 36, of which you have a copy. Up at the  
 9 top you have two paragraphs of which you use  
 10 the UNE remand order from the FCC's UNE  
 11 remand order.  
 12 In that paragraph, the second  
 13 paragraph, they talk about the copper spool  
 14 and how, if you said, well, just simply using  
 15 capability, that would be much too broad.  
 16 They say a copper spool in and of itself is  
 17 capable, but if you define that as UNE, that  
 18 is too broad. But then they say, well, dark  
 19 fiber is different, and here's what we mean  
 20 by capability, it is physically connected to  
 21 the incumbent's network and easily called  
 22 into service.  
 23 Our facilities, our co-ax  
 24 facilities, do not meet that standard, do not  
 25 meet that rationale. It is not easily called

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1 into service; it is not connected to my  
 2 network; it is not part of my network. So  
 3 from our perspective, there is no way as a  
 4 matter of law that you can define this as a  
 5 network element in the first instance to  
 6 allow you to get to unbundling. And that, we  
 7 submit, is a fatal error that must be  
 8 reconciled in any final decision.  
 9 Second, in the draft  
 10 decision, and actually throughout it, the  
 11 Department relies on the UNE remand order in  
 12 fashioning its impairment analysis and in  
 13 fashioning the impairment standard. It  
 14 relies on the UNE remand order. May I  
 15 approach?  
 16 THE CHAIRPERSON: Of course.  
 17 MR. MOREIRA: And I just  
 18 bracketed on pages 30 and 31 there's a long  
 19 discussion on UNE remand, and then on  
 20 pages 40 and 41, which I've highlighted for  
 21 you, there's a more in-depth or a more firm  
 22 upholding of the UNE remand order. And  
 23 specifically on pages 40 and 41, the  
 24 Department recites the UNE remand order's  
 25 impairment standard and says that it



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1 specifically agrees with it. That standard,  
 2 however, was vacated in the D.C. Circuit's  
 3 USTA decision. It was explicitly rejected  
 4 and vacated.  
 5 And just for your reference,  
 6 the USTA decision is 290(F)3RD 415, and I go  
 7 to the specific page just to read it into the  
 8 record -- I know sometimes it gets a little  
 9 monotonous to have someone do that -- on  
 10 page 428 of USTA it specifically says:  
 11 "Because the Commission's concept of  
 12 impairing costs disparity is so broad and  
 13 unrooted in any analysis of the competing  
 14 values at stake in implementation of the Act,  
 15 we cannot uphold even the two nonuniversal  
 16 mandates adopted by the Commission for  
 17 circuit switches and packet switches." They  
 18 reject the entire impairment analysis in  
 19 USTA.  
 20 In the draft decision on  
 21 page 35 in footnote 100 the Department  
 22 disagrees with our contention that USTA  
 23 vacated that, as does Gemini.  
 24 However -- may I approach  
 25 again?

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1 COMM. DOWNES: Yes.  
 2 MR. MOREIRA: Thank you.  
 3 COMM. DOWNES: Thank you,  
 4 sir.  
 5 MR. MOREIRA: In the  
 6 triennial review order, on page 28,  
 7 paragraph 31, so let's say you don't want to  
 8 believe the telco, in paragraph 31 the FCC  
 9 recognizes itself that the D.C. circuit in  
 10 USTA did just that, it vacated the impairment  
 11 standard. It says that right in the  
 12 highlighted section of paragraph 31.  
 13 So we submit again to you  
 14 that any final decision cannot rely on the  
 15 UNE remand order's impairment standard. In  
 16 USTA it was specifically rejected. That  
 17 specific paragraph that the Department agrees  
 18 with was rejected in the context of line  
 19 sharing in the USTA decision. It  
 20 specifically found that reading the "seeks to  
 21 offer," which is exactly how Gemini gets  
 22 impairment in this case, is an unreasonable  
 23 reading of the Act. The FCC recognizes that,  
 24 and in paragraph 31 they say, Hey, we  
 25 recognize that the UNE remand order was

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1 vacated in USTA versus FCC.  
 2 So we request that the  
 3 Department follow the impairment standard  
 4 that exists currently in the TRO only.  
 5 COMM. DOWNES: Now, this  
 6 seems to indicate that the -- that the D.C.  
 7 circuit sent this decision back to the FCC  
 8 and asked them to -- asked them to reconsider  
 9 and perhaps do some other things here. Has,  
 10 in fact, the FCC responded to that remand  
 11 order yet?  
 12 MR. MOREIRA: Yes, they have.  
 13 That's the triennial review order, and that's  
 14 what you're looking at right there.  
 15 COMM. DOWNES: I see.  
 16 MR. MOREIRA: That is a  
 17 summary of the FCC -- that's in their initial  
 18 summary section of their triennial review  
 19 order summarizing what has happened  
 20 procedurally.  
 21 COMM. DOWNES: Okay.  
 22 MR. MOREIRA: They say, Hey,  
 23 this was vacated, necessitating the triennial  
 24 review order with this new impairment  
 25 standard that we hand down in that order. So

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1 what we suggest here is any reference to UNE  
 2 remand order impairment needs to be removed  
 3 from any final decision; otherwise, it's an  
 4 error as a matter of law because of what the  
 5 current law is, is whatever the impairment  
 6 standard is in the triennial review order.  
 7 COMM. DOWNES: And the TRO, I  
 8 take it, implemented a new impairment  
 9 standard?  
 10 MR. MOREIRA: Implemented,  
 11 exactly, a new impairment standard.  
 12 COMM. DOWNES: And how does  
 13 the new impairment standard differ from the  
 14 old one?  
 15 MR. MOREIRA: Well, it varies  
 16 greatly. I mean, it has multiple steps which  
 17 really go to a factual matter, but it has  
 18 multiple concepts that are not allowed in TRO  
 19 that you adopt in your decision, and I'll get  
 20 to them. I think I can explain if you allow  
 21 me to continue with my argument. But it is a  
 22 different standard, nevertheless.  
 23 Here's -- this leads right  
 24 into my next argument. The Department's  
 25 draft decision is inconsistent with current

<p style="text-align: right;">Page 30</p> <p>1 federal law, which is the triennial review  2 order and USTA. Those are the two decisions  3 that guide us on unbundling because that's  4 the existing law. You have the D.C. Circuit  5 in USTA which forces the FCC to do TRO, then  6 you now have TRO which is currently the law  7 of the land on unbundling. Whether we like  8 it or not, that's what it is.  9 It is inconsistent with  10 federal law. And let me explain why.  11 First of all, what you see  12 there, the red coaxial facilities, were not  13 discussed in the triennial review order.  14 Nowhere will you find where the FCC has said  15 those facilities need to be unbundled or need  16 not be unbundled. You won't find it. Those  17 specific facilities are not even called a  18 loop in the sense as we know it in the  19 telecommunications industry. They refer to  20 them as intermodal loops because they  21 recognize one is an Apple and one is an IBM.  22 They're different kinds of loops. They're  23 quasi-loops, I'll grant you that, but they're  24 not a loop in the sense of  25 telecommunications.</p>	<p style="text-align: right;">Page 32</p> <p>1 Rocky Hill doesn't have its own central  2 office, but it's got remote terminals that  3 then feed into that. That's the hybrid loop  4 that they discuss in TRO, not this stuff here  5 (indicating).  6 The Department recognizes  7 that it's not discussed in the draft  8 decision, and I believe on page 37 the draft  9 decision says, We recognize that it is not  10 discussed, but at the same time then says we  11 think it's the equivalent of the hybrid loop  12 that's up there. It then doesn't give any  13 real rationale as to why it's an equivalent.  14 We tend to think it is not.  15 Let's assume for purposes of  16 argument that it is an equivalent. Even if  17 it were an equivalent, in the triennial  18 review order on page 176, paragraph 296, the  19 FCC says: If you have these hybrid loops,  20 ILEC, you have to unbundle only a narrow-band  21 path, but if you want, at your own  22 discretion, you can run a copper loop, and  23 that's good enough to meet the unbundling  24 standard. You don't even need to give them  25 access to that. If you give them a copper</p>
<p style="text-align: right;">Page 31</p> <p>1 In the FCC's triennial  2 review order they talk about three loops.  3 They talk about -- because that's what this  4 whole case is about, really, the loop  5 setting -- they talk about copper based  6 loops; they talk about hybrid loops; and they  7 talk about fiber to the home loops.  8 In the triennial review  9 order, copper loops have to be unbundled  10 really to the furthest extent because it is a  11 legacy-based network and they believe that it  12 sends the best investment signals to unbundle  13 the copper.  14 As to hybrid loops, which are  15 a little different -- and may I? -- a hybrid  16 loop -- I don't know what I did with my  17 pens -- a hybrid loop generally speaking will  18 come from a central office -- I'll draw it  19 down here. You'll get fiber from the central  20 office to a remote terminal -- am I right  21 there, terminal? -- and then from the remote  22 terminal you'll have the same copper setting  23 and, in essence, extends the reach of the  24 central office, is all it does, you know,  25 kind of like the Rocky Hill case because</p>	<p style="text-align: right;">Page 33</p> <p>1 loop, you don't need to provide them the  2 hybrid loop.  3 May I approach?  4 THE CHAIRPERSON: Uh-huh.  5 MR. MOREIRA: Yes. It's on  6 the next page, bottom of the first page, and  7 on the next page it's called a "home run  8 loop." So as long as the telco provides a  9 home run loop, I don't even need to provide  10 them a hybrid loop, and if that's the case,  11 there is no way that our coaxial facilities  12 that are outside the unbundling of those is  13 consistent with the law, presuming for the  14 moment that they are an equivalent, which we  15 do not think they are. That's the first  16 inconsistency with current federal law on  17 triennial review.  18 Next, throughout the draft  19 decision, particularly on pages 41 and 42 of  20 which I will provide copies to you, the  21 Department finds that Gemini meets the  22 impairment standard, and it's really the only  23 way you can get there because, at least in  24 the Department's mind, they meet the  25 impairment standard because accessing our</p>

9 (Pages 30 to 33)

<p style="text-align: right;">Page 34</p> <p>1 current unbundled facilities would force  2 Gemini to destroy its cable modem business  3 plan. That's the argument of meeting  4 impairment, i.e., our facilities are not good  5 enough, our facilities don't match their  6 Apple, our IBM doesn't match their Apple,  7 therefore they're useless to them, and they  8 are impaired.  9 May I approach?  10 COMM. DOWNES: Uh-huh.  11 MR. MOREIRA: And I've  12 highlighted the specific portions where that  13 argument is made in the draft decision by the  14 Department.  15 COMM. DOWNES: Thank you.  16 MR. MOREIRA: That  17 business-specific analysis, that analysis  18 that says, Hey, let's look at Gemini, see  19 what their business plan is, and if they're  20 impaired based on their specific business  21 plan, was specifically rejected in the USTA  22 decision and again in the triennial review  23 order.  24 In USTA when they were  25 talking about the line sharing order, the FCC</p>	<p style="text-align: right;">Page 36</p> <p>1 completely inconsistent on impairment as to  2 what the law is for unbundling.  3 Basically what we're saying  4 here in this argument is if I've got all my  5 blue stuff unbundled and I meet all the rules  6 and regulations to unbundle it, how could  7 you, as a matter of law, be impaired? That's  8 what we're saying there. So your business  9 plan doesn't matter. What kind of equipment  10 you use, that's your business. What we have  11 here is what we have unbundled, and if it's  12 not good enough for you, well, then you have  13 to build it on your own. If it's good  14 enough, then use it. But you can't look at  15 what they're using to find impairment.  16 You've got to look at what's out there and  17 what other people are accessing every day.  18 That's our argument there.  19 In addition, in the draft  20 decision the Department looks at what are the  21 benefits to unbundling this specific coaxial  22 facility? The Department finds that this  23 would be good for competition. The  24 Department finds that if we unbundle this,  25 Gemini will spend millions of dollars in</p>
<p style="text-align: right;">Page 35</p> <p>1 tried to uphold it by saying, Hey, I've  2 looked at this statute. It's what they seek  3 to offer. The DSL companies seek to offer  4 DSL without access to line sharing. They  5 can't do it. They therefore are impaired.  6 The D.C. Circuit said that's  7 unreasonable. The D.C. Circuit said, Hey,  8 you've got to look at a lot of other factors,  9 and that is a much too narrow a reading of  10 unbundling rules. That's what they said in  11 USTA.  12 In triennial review -- and  13 I'm looking for something here -- the FCC  14 recognized in paragraph 115 that they will no  15 longer look at a business-specific --  16 business plan specific view of impairment.  17 And I have it here, and I'll bring it up in a  18 second.  19 (Pause.)  20 MR. MOREIRA: Well, I have it  21 but I can't locate it. Paragraph 115 of the  22 triennial review order, please take a look at  23 it. They specifically reject a  24 business-specific analysis, and that's what  25 the Department does here. So that makes it</p>	<p style="text-align: right;">Page 37</p> <p>1 investments to make this a going network.  2 However -- and those are all  3 fine things from a public policy perspective,  4 but, number one, they don't get you  5 impairment; and number two, that goes  6 directly -- well, it only is half the  7 analysis is probably the best way to look at  8 it.  9 In USTA the district -- the  10 D.C. Circuit specifically said you have to  11 balance the benefits of unbundling against  12 the costs of unbundling. The draft decision  13 nowhere covers what the costs of unbundling  14 are, and there are serious costs.  15 Whenever you unbundle  16 something and you force someone to share  17 something, you've now created a disincentive  18 for that given company to invest in future  19 assets, take more chances and saying, well,  20 gee, we tried HFC and that didn't work.  21 Well, am I going to try fiber to the home?  22 Well, maybe not. Hey, am I going to try PDQ  23 technology that Cisco came out with? Maybe  24 not, because if I have to share my investment  25 with a competitor who doesn't have to spend</p>

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1 any money, I may not invest in that and just  
 2 stay with the status quo. And the USTA  
 3 decision covers that and says, Hey, you have  
 4 to balance both.  
 5 I'm not telling you here,  
 6 although I think you know where I think the  
 7 balance falls, but that balancing analysis  
 8 still needs to be carried out in the  
 9 decision, and it wasn't carried out.  
 10 Next, the Department relies  
 11 on its own independent state unbundling  
 12 authority to unbundle these coaxial  
 13 facilities, and in the TRO the FCC says, yes,  
 14 states can unbundle -- again, I don't  
 15 necessarily agree with it -- but states can  
 16 unbundle under their own independent state  
 17 authority so long as it is consistent with  
 18 what we say here. So if we say "X," and then  
 19 you do opposite of "X," you can't do that,  
 20 but as long as it's consistent with what we  
 21 say here, you can do it.  
 22 The state's unbundling  
 23 statute is 16-247(b)(a). May I approach?  
 24 THE CHAIRPERSON: You may.  
 25 COMM. DOWNES: Thank you.

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1 MR. MOREIRA: (b)(a) is where  
 2 we have, the DPUC has its authority to  
 3 unbundle. It's the only location it can go,  
 4 and it has to strictly follow whatever the  
 5 statute says. And the statute says, whether  
 6 on a petition or on its own motion, the  
 7 Department can initiate a proceeding -- this  
 8 one is a petition -- to unbundle a -- these  
 9 are critical words here -- telephone  
 10 company's network, services and functions.  
 11 In this case it's network, so telephone  
 12 company's network that are used to provide  
 13 telecommunication services, which the  
 14 Department determines after noticing hearing,  
 15 another critical word, that are in the public  
 16 interest consistent with federal law and  
 17 technically feasible.  
 18 There's multiple elements,  
 19 but the elements that I really want to cover  
 20 are telephone company's network. Yes, you  
 21 can unbundle anything within my network.  
 22 This is not within my network. Under state  
 23 law you can't unbundle this.  
 24 So if I bought a cable  
 25 company tomorrow, Telemedia in Waterbury, you

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1 couldn't order me to unbundle it just because  
 2 I owned it. You could only order me to  
 3 unbundle something that's actually part of my  
 4 network, my telephone company's network.  
 5 Second, you would only  
 6 unbundle if it's technically feasible of  
 7 being tariffed. We haven't even addressed  
 8 technical feasibility in this draft decision.  
 9 We have not had a hearing to address the  
 10 merits, so I think both parties agree, at  
 11 least in principle, at least in broad theory,  
 12 no one really knows how to unbundle. Gemini  
 13 will argue we don't need to unbundle, we'll  
 14 take the whole thing. That's our method of  
 15 unbundling. Having said that, how do I share  
 16 this network on a nondiscriminatory basis and  
 17 tariff it, as I'm required to do by statute,  
 18 if nobody knows how? We certainly should be  
 19 afforded an opportunity to demonstrate  
 20 technical feasibility.  
 21 Lastly, in the TRO and in all  
 22 the other FCC unbundling decisions, the FCC  
 23 defines the component parts of our network  
 24 that can be unbundled. So, for instance,  
 25 they define the loop, which I showed to you

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1 earlier which really goes from the  
 2 distribution mainframe to the house, right to  
 3 that little box on the side of your house.  
 4 That constitutes a loop. They talk about  
 5 subloops, which will be a piece of that. It  
 6 typically has a specific point that you could  
 7 attach to that allows you to make that  
 8 differential. They talk about transport,  
 9 which would be central office to central  
 10 office. They talk about switching. They  
 11 talk about other things, but generally  
 12 speaking those are the broad brush strokes of  
 13 components that can be unbundled.  
 14 I don't know, and I don't  
 15 think anybody knows, what this is. When I  
 16 say "what this is", I'm talking about the red  
 17 stuff. It's not a loop because it doesn't go  
 18 from my central office mainframe or even from  
 19 my central office directly to somebody's  
 20 house. It's not that. It's not transport.  
 21 It doesn't go from central office to central  
 22 office. It's not a subloop because it  
 23 doesn't meet the subloop definition in  
 24 47 CFR 51.319. It doesn't meet that  
 25 definition. It's not switching. Well, if

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1 it's none of those things, you then have to  
 2 create some other kind of element, of which I  
 3 do not know what it exists or what we would  
 4 call it, which is a problem in and of itself.  
 5 If it doesn't meet any of  
 6 those standards, how are you consistent with  
 7 federal law when we don't even know how to  
 8 characterize it? As best as I can tell,  
 9 they're trying to create some form of  
 10 footprint to allow them to continue their  
 11 cable modem business, but what that footprint  
 12 is and what it constitutes, I have no idea  
 13 under what federal law has defined for  
 14 telecommunication services. I just don't  
 15 know.  
 16 Those are the main pure legal  
 17 issues where I can say, hey, take a look at  
 18 this statute or, hey, take a look at this  
 19 case. But there are others, and the other  
 20 issues, I'd like to characterize them.  
 21 They're just as critical but they're more  
 22 procedural in nature. And we address this in  
 23 our written exceptions.  
 24 We submit that in this draft  
 25 decision the Department, I believe

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1 unintentionally, went a little further than  
 2 what the scope had permitted. The scope was  
 3 laid out on February 10, 2003 in a Department  
 4 letter ruling where the Department says,  
 5 basically, that they are in agreement with  
 6 SNET that this case should be bifurcated. We  
 7 will address the legal issues here, and then  
 8 we will proceed accordingly. Because there  
 9 were substantial legal issues. Does the  
 10 Department have jurisdiction, independent  
 11 jurisdiction to unbundle? Are these kind of  
 12 elements or these components even subject to  
 13 unbundling in a broad perspective? Does  
 14 Gemini have standing -- and I use the word  
 15 "standing" only because I couldn't figure out  
 16 a better word -- does it have standing to  
 17 even establish impairment as a matter of law?  
 18 The Department went beyond  
 19 that in this decision. The Department said,  
 20 yes, Gemini meets all those standards. Yes,  
 21 we have jurisdiction. Yes, these elements  
 22 are subject to unbundling, but then said,  
 23 hey, as a factual matter, it meets the TRO's  
 24 impairment standard, which talks about first-  
 25 mover advantages, sunk costs. It talks about

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1 obtaining permits, et cetera. There's four  
 2 or five elements that are broad that they  
 3 cover as to when something should or should  
 4 not be impaired. They say, Hey, they meet  
 5 all that evidence, but there's been no  
 6 evidence presented factual or otherwise in  
 7 this docket, none whatsoever.  
 8 We agreed not to have a  
 9 hearing because we thought it was addressing  
 10 solely the legal issues. We still believe  
 11 there's warranted a factual hearing to  
 12 address, do they meet any of these criteria  
 13 as a factual matter?  
 14 And, secondly, we are also  
 15 entitled to establish that this is  
 16 technically unfeasible, factually, because if  
 17 it is, it is a defense to unbundle. If it's  
 18 not, then it would be unbundled. Those  
 19 issues need to be addressed in a factual  
 20 hearing, as opposed to the legal issues which  
 21 were addressed.  
 22 And we believe that we would  
 23 be upheld on requiring a hearing because  
 24 16-247(b)(a) requires just such a hearing.  
 25 Lastly, from a procedural

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1 perspective, the Department -- and I've been  
 2 talking a long time, and I'm sure I've even  
 3 bored myself -- from a procedural  
 4 perspective, the Department had an  
 5 implementation order which we just believe is  
 6 unrealistic. Let's presume I'm wrong on all  
 7 of these things and you decide to go forward.  
 8 The Department ordered that we  
 9 have an inventory by February 1, 2003. The  
 10 Department ordered that cost studies be  
 11 prepared by May 1, 2003. And then we have an  
 12 operational OSS in place by June 1, 2004.  
 13 And I used the wrong numbers. It's 2004 for  
 14 all of those. We cannot meet any of those  
 15 deadlines.  
 16 With the winter, it's going to  
 17 take us about 8,000 man hours to do the  
 18 inventory of the 3000-plus miles that are out  
 19 there. There is no way we can get it done by  
 20 February 1. We would ask that that be moved,  
 21 extended out, certainly to at least April 30.  
 22 Hopefully, we can get it done by then.  
 23 As to the cost studies,  
 24 Gemini, in its written exceptions, threw a  
 25 big monkey wrench into this because presuming

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1 we lose, we do believe this has to be priced  
 2 at TSLRIC. To be priced at TSLRIC we need to  
 3 define exactly what the element is so that  
 4 then you can go out and do the pricing.  
 5 There's no way we can meet by May 1 that  
 6 deadline without having those specifics in  
 7 place, and Gemini doesn't even want TSLRIC  
 8 used.

9 I think they, even based on  
 10 what I read, implicitly would like it close  
 11 to nothing, because from their perspective  
 12 this was abandoned and they think we should  
 13 use a completely different pricing  
 14 methodology based on some technical meetings  
 15 that we would have.

16 We don't have a problem with  
 17 technical meetings, but whatever it's going  
 18 to be priced at, even though we don't think  
 19 TSLRIC is a fair pricing, we have to follow  
 20 TSLRIC for UNE pricing if we ever got to  
 21 that. We pray and hope that you'll change  
 22 your mind.

23 As to the OSS, no one knows  
 24 of any vendor that even has built an OSS for  
 25 HFC type facilities because cable companies

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1 don't have to share their networks. No one  
 2 has ever developed it. It probably would  
 3 have been developed if Lucent and Nortel kept  
 4 going on the HFC path. They never did. So  
 5 there's no OSS. We'll have to find someone  
 6 who's willing to do it and get them to build  
 7 it. I know in this technological age it's  
 8 doable, but it's certainly going to take some  
 9 time, and June 1 is just not a realistic time  
 10 frame.

11 Assuming that, our last  
 12 points really go to -- let's assume you think  
 13 I'm all wet on all of these things and you  
 14 want to just proceed. With respect to the  
 15 inventory, which we do agree should be split,  
 16 we would prefer that they pay for all but  
 17 split seems reasonable to us, we request that  
 18 they give us a revokable letter of credit to  
 19 pay for their share of the inventory, at a  
 20 minimum.

21 We would prefer that they  
 22 put all of it up front to make sure they  
 23 don't walk away and then we are left holding  
 24 the bag if they decide not to use this  
 25 network. We would prefer for the total

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1 600,000 estimate, but we certainly could live  
 2 with half, but there needs to be a letter of  
 3 credit, and we expect and would prefer a  
 4 letter of credit, as well, for the OSS  
 5 because that's not going to be an inexpensive  
 6 task as well.

7 I think I've covered all the  
 8 issues. I've made a big mess, and I  
 9 appreciate your time very much. Thank you.

10 THE CHAIRPERSON: Attorney  
 11 Moreira, that was very impressive.

12 COMM. DOWNES: Certainly was.

13 THE CHAIRPERSON: Attorney  
 14 Janelle.

15 MS. JANELLE: Good morning,  
 16 Commissioners.

17 THE CHAIRPERSON: Good  
 18 morning.

19 MS. JANELLE: Jennifer  
 20 Janelle from Murtha Cullina on behalf of  
 21 Gemini Networks.

22 I think I'm going to start  
 23 this morning by saying obviously Gemini came  
 24 to the Department seeking to have the HFC  
 25 network of SBC unbundled, and in this case

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1 the Department did exactly what is required  
 2 of it by both federal and state law.

3 All of the issues raised here  
 4 today, all of the legal issues pointed out by  
 5 Attorney Moreira, have been raised in this  
 6 proceeding. They've been briefed, briefed  
 7 again. There have been written comments  
 8 filed, and the Department has adequately  
 9 addressed them all in its draft decision. I  
 10 am going to rebut, obviously, and point out a  
 11 few things with respect to some of the things  
 12 that Attorney Moreira has said, but we  
 13 believe that jurisdiction as to unbundling is  
 14 clear and that the Department appropriately  
 15 applied the law.

16 I am going to start, though,  
 17 with the one sentence that I heard this  
 18 morning that I can say that Gemini absolutely  
 19 agrees with, and that is that in this case  
 20 the Department went beyond the scope of what  
 21 this phase was supposed to be about.

22 In response to SBC's motion  
 23 to bifurcate this proceeding, the Department  
 24 ruled that phase one was going to be limited  
 25 to the issues surrounding unbundling, and

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1 that's what Gemini briefed, and we were told  
 2 that issues surrounding cost of service and  
 3 inventory would be dealt with in a subsequent  
 4 phase.  
 5 So we didn't present any  
 6 evidence on those issues, and, in fact, the  
 7 discovery we requested with respect to those  
 8 issues was denied, and we were told that  
 9 those issues would be taken up in phase two.  
 10 And then the draft decision came out, and we  
 11 were somewhat surprised to see that there  
 12 were rulings with respect to payment for cost  
 13 of service, inventory and OSS.  
 14 And, unfortunately, if the  
 15 draft is finalized as it stands with those  
 16 rulings, with respect to payment for cost of  
 17 service, OSS and inventory, it's really going  
 18 to be a loss, and a loss for everyone,  
 19 because Gemini cannot proceed to utilize this  
 20 network with those kinds of up-front costs.  
 21 And we believe that these were inadvertent  
 22 rulings with unintended consequences by the  
 23 Department, and I want to just take a minute  
 24 and explain our position on that and what we  
 25 sort of intended would happen as part of the

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1 phase two.  
 2 I'll talk about the three  
 3 issues separately: The cost of service, the  
 4 inventory and the OSS.  
 5 And I'll start with the OSS.  
 6 We've spoken with our consultant and we've  
 7 been told that development of the OSS, and I  
 8 think what Attorney Moreira has said, he  
 9 would agree with this, it's going to be in  
 10 excess of \$5 million, \$5 million before we  
 11 start, \$5 million before the network is  
 12 activated, \$5 million before we can use it.  
 13 That's a competitive barrier. That's a  
 14 barrier to market entry for Gemini and also  
 15 we believe for any other company that would  
 16 seek to utilize this network to provide  
 17 competitive services to customers.  
 18 The second point with respect  
 19 to the OSS, as envisioned by the draft and by  
 20 SBC, is that it's entirely unnecessary, and I  
 21 feel a little bit of a disadvantage because I  
 22 don't draw and I don't have handouts, but I'm  
 23 going to rely a little bit on Attorney  
 24 Moreira's diagram.  
 25 THE CHAIRPERSON: We're going

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1 to hold that against you, too.  
 2 MS. JANELLE: Please don't.  
 3 The OSS that SBC is talking about is an OSS  
 4 that's going to handle the installation, the  
 5 billing, the maintenance for the millions of  
 6 twisted pair lines that run independently to  
 7 everybody's home. We're not talking about  
 8 these lines. We're not talking about these  
 9 separate individual pieces. Attorney Moreira  
 10 is correct. We don't need an OSS to do this.  
 11 We are talking about the red.  
 12 We're talking about the network that goes  
 13 from pole to pole. It's not consisted of  
 14 individual twisted pairs. It's a pipeline.  
 15 It's bandwidth. And what we have proposed is  
 16 that we would lease that bandwidth on a  
 17 per-mile basis.  
 18 And by leasing it on a  
 19 per-mile basis, the OSS can be as simple as  
 20 somebody sitting down at a word processor and  
 21 saying, you've leased a thousand miles; it's  
 22 ten dollars per mile, which is the figure I  
 23 heard and that sounds good to me, so,  
 24 therefore, please send us your money. A  
 25 thousand miles times ten dollars, that's the

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1 bill. That's the OSS that's needed.  
 2 As far as maintenance and  
 3 repair, Gemini has submitted in this  
 4 proceeding that it will maintain the network.  
 5 It will upgrade the network. It will repair  
 6 the network. There's no need for SNET to  
 7 dispatch technicians to do that. And that  
 8 also places SNET in the unique position of  
 9 being able to lease a broken, useless,  
 10 worthless piece of equipment, which is how  
 11 they've characterized it, and get back at the  
 12 end of the lease period a fully functional,  
 13 upgraded network at absolutely no cost to  
 14 them; functional and available to lease to  
 15 the next party that comes through the door  
 16 that wants to lease it.  
 17 And the best analogy I can  
 18 give you would be if you owned a house and it  
 19 had a hole in the roof and a crack in the  
 20 foundation and clapboard siding falling off,  
 21 and I move into your house. And I pay you  
 22 rent of \$500 a month, and I replace the roof,  
 23 I fix the foundation and I put up brand-new  
 24 vinyl siding, all while I'm paying you \$500 a  
 25 month, and the upgrades and repairs at my

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1 sole cost. Then I move out. Well, the next  
 2 person that moves in, you've got a beautiful,  
 3 near brand-new house that you can rent out  
 4 for a lot more money at absolutely no cost to  
 5 you and only profit. And that's what we've  
 6 proposed in this proceeding, and that's why  
 7 an OSS, as envisioned by SBC, is absolutely  
 8 unnecessary.

9 This leads me to the issue of  
 10 we don't know how to unbundle this. We've  
 11 got to provide nondiscriminatory access to  
 12 everybody who wants to use it, and I would  
 13 submit that, again, we have -- we do intend,  
 14 we would like to lease the whole thing. Is  
 15 that going to happen from day one? I don't  
 16 know. I can't say. That's something that's  
 17 got to be worked out at the conclusion of  
 18 this proceeding. But it's conceivable to  
 19 Gemini that they could lease maybe the HFC  
 20 network in Hartford and some other company  
 21 could lease the HFC network in Fairfield.  
 22 You can have multiple companies using  
 23 portions of this network, different portions  
 24 of the network in different areas of the  
 25 state, and that can be accomplished through

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1 unbundling.

2 And as far as the contention  
 3 that this network needs to be made available,  
 4 the same piece, to multiple users, I submit  
 5 that that's not true. And the reason is, you  
 6 can look at, for instance, dark fiber. Dark  
 7 fiber is a UNE. Dark fiber is available to  
 8 anyone who asks for it, but if a company  
 9 comes in and asks for dark fiber and there's  
 10 none available because it's all being used,  
 11 SBC doesn't go out and construct new dark  
 12 fiber for this person or this company. They  
 13 say, We're sorry, there is no more available.  
 14 And that is the exact same situation that can  
 15 be applied to the HFC network in this  
 16 proceeding.

17 If Gemini is leasing it in  
 18 Hartford, and another company comes along and  
 19 says, we'd like to use it. I'm sorry, it's  
 20 being used. It's not available. And if  
 21 CableVision or another company is utilizing  
 22 the HFC network in Fairfield and Gemini says,  
 23 we'd like to lease it in Fairfield. The  
 24 answer is, I'm sorry, it's not currently  
 25 available. This is a workable situation, and

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1 I think it's being made far more complicated  
 2 than it needs to be.

3 Number two. With respect to  
 4 the inventory, again, we think that this,  
 5 number one, is wholly unnecessary in this  
 6 proceeding. The fact is that SBC has the  
 7 inventory. They have a complete inventory of  
 8 the HFC network with an approximately  
 9 94 percent degree of accuracy.

10 On May 1 of 2001, SBC filed  
 11 its compliance plan in Docket Number  
 12 00-08-14, where they were giving up the  
 13 network. As part of that compliance plan  
 14 they had a complete valuation of the network  
 15 done by Arthur Andersen. There is a complete  
 16 inventory of this network as of May 1, 2001.  
 17 Now, SBC has made statements that, well,  
 18 we've been taking parts down; we haven't kept  
 19 records; and that's true. During SBC's  
 20 appeal of the Department's order that they  
 21 stopped taking down the network, with  
 22 representatives of the Department and the  
 23 Attorney General's Office present, and I  
 24 believe Consumer Counsel was there also, SBC  
 25 stated that they had removed a little less

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1 than 200 miles of the network.

2 THE CHAIRPERSON: This is an  
 3 appeal in court.

4 MS. JANELLE: I'm sorry. The  
 5 appeal across the plaza in Superior Court.  
 6 Two hundred miles out of a 3,196-mile network  
 7 is approximately 6 percent.

8 So if we accept the inventory  
 9 that currently exists, there's a 6-percent  
 10 margin of error, and Gemini is willing to  
 11 accept that risk. We think that during our  
 12 buildout and our upgrade and our maintenance,  
 13 obviously we will discover that 6 percent  
 14 that's missing.

15 Now, as to anything that's  
 16 been removed from that time to the present,  
 17 the stipulation that resolved that appeal in  
 18 Superior Court required SBC to keep very  
 19 detailed records of what's being removed,  
 20 also keep the as-built plans for the network,  
 21 so we know that those exist also. And Gemini  
 22 has a right to inspect and make sure that  
 23 those records are being kept, and we, in  
 24 fact, did send an engineer to SBC and we have  
 25 confirmed that those records are being kept.



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1 THE CHAIRPERSON: Now, when  
2 you say you'll take the risk for the  
3 6 percent, does that mean that if you come  
4 across some area that's not built, that's  
5 been taken down, you will fix it yourself?  
6 MS. JANELLE: Yes.  
7 THE CHAIRPERSON: At your  
8 cost?  
9 MS. JANELLE: At our cost.  
10 We have proposed to upgrade and maintain this  
11 network, and that includes the missing  
12 portions. Now, that is, Commissioner, with  
13 respect to the 6 percent.  
14 THE CHAIRPERSON: What if  
15 it's 7 percent? What if it's not 6 percent?  
16 MS. JANELLE: If it's 7  
17 percent or 8 percent, I think my client would  
18 allow me to state that we would accept that  
19 also. What we're asking for is what's out  
20 there in an as-is condition. We're not  
21 asking them to do a single thing in this  
22 proceeding, except with the caveat that the  
23 stipulation that resolved the appeal provided  
24 that anything that SBC takes down from the  
25 resolution of the appeal to the present, if

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1 they ultimately lose in this proceeding and  
2 all final appeals coming out of it, they are  
3 going to put it back up at their expense and  
4 at a time line that we have agreed on.  
5 So we're willing to accept  
6 what we believe is a 94 percent accurate  
7 inventory. We haven't physically seen it  
8 because we requested it by way of discovery,  
9 and we never got it. So, you know, we're  
10 still looking to see those plans, and this is  
11 another thing that we hoped would be resolved  
12 in phase two of this proceeding.  
13 Additionally, I have to note  
14 that on the inventory issue we also believe  
15 it is inappropriate for anyone other than the  
16 public service company to have to pay for the  
17 public service company to straighten out its  
18 records. SNET is the joint pole owner in  
19 most cases. In some cases the sole pole  
20 owner, and in pretty much all cases the  
21 custodian of the poles. They have an  
22 obligation to know what is out there for  
23 reasons of public safety.  
24 They are the custodians of  
25 attachments. When people come to them and

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1 want to attach wires to the poles, they have  
2 an obligation to know what is out there on  
3 those poles, especially now when the  
4 communications gain is at such a premium and  
5 they have essentially dead wire taking up  
6 space.  
7 The analogy I would give you  
8 to demonstrate that this is their burden is  
9 with respect to CL&P. The Department has  
10 recently been engaged in proceedings with  
11 CL&P, and Commissioner Downes, I've seen you  
12 before there, where --  
13 COMM. DOWNES: Oh, just  
14 for 18 days of hearings. Not a problem.  
15 MS. JANELLE: Just a couple  
16 days -- where it was found that CL&P had not  
17 kept adequate records of its streetlight  
18 facilities. They didn't know what lights  
19 were out there, what wattages they were, and  
20 the Department found that could be completely  
21 unacceptable, and the Department ordered them  
22 to audit the entire CL&P streetlight network  
23 in every town in which they provide service  
24 and to do it at their own cost. And I don't  
25 see any difference from that case to this

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1 case.  
2 My third point with respect  
3 to the issues that we believe are beyond the  
4 scope is the cost of service. I would agree  
5 with Attorney Moreira that Gemini has said,  
6 TSLRIC, there's a fundamental problem with  
7 performing TSLRIC cost of service, though,  
8 for this particular network because it's  
9 abandoned property. By definition, it has no  
10 value.  
11 Now, there's no such thing as  
12 a free lunch, and Gemini is not standing here  
13 saying that, well, we should get it for  
14 nothing because there's no value if you do a  
15 cost of service. This is an issue. How the  
16 cost of service needs to be done is an issue,  
17 again, that we felt would be discussed in  
18 phase two. We have suggested that it can be  
19 discussed through a technical meeting.  
20 However, we don't think that it's necessary  
21 to go out and do a cost of service for every  
22 nut and bolt on every pole in every part of  
23 the network in the state of Connecticut.  
24 We believe that you can take  
25 a random sampling, whether it's a three-mile

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1 stretch or a five-mile stretch, take five or  
 2 six of them in different places in the state  
 3 and extrapolate that to get a per-mile cost  
 4 for this network. And I would point out that  
 5 SPV leased this network. They didn't lease  
 6 it on a nut-and-bolt basis by individual  
 7 components. They leased the network as a  
 8 whole, and that's what we're seeking to do  
 9 here. We want to lease what's there on a  
 10 per-mile basis, in an as-is condition. We'll  
 11 upgrade it. We'll maintain it. And any  
 12 negligible costs to perform this kind of cost  
 13 study to figure out what this rate is going  
 14 to be should be put in the rates for rental  
 15 of the network.

16 THE CHAIRPERSON: Did SPV  
 17 lease it on a per-mile basis?

18 MS. JANELLE: I don't know  
 19 exactly how SPV leased it because that is  
 20 another document that we sought through  
 21 discovery, and we were denied. So I was not  
 22 able to see the actual leasing agreement, but  
 23 based on our limited knowledge of what  
 24 occurred in the SPV docket, we believe that  
 25 SPV leased this network as a whole and not on

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1 an individual nut-and-bolt basis.

2 So ultimately we believe that  
 3 there's a tremendous opportunity to  
 4 jump-start competition here and especially in  
 5 a time when major players are leaving the  
 6 local market, including AT&T. Gemini is  
 7 ready to come in. We're ready to provide  
 8 service. However, the draft decision,  
 9 although it's, we believe, absolutely right  
 10 on the law, unfortunately places cost  
 11 barriers to our entry into the market and our  
 12 use of the network, that if they stand, we're  
 13 out of the game, and we'd like the Department  
 14 to remove those portions regarding the OSS,  
 15 the cost of service and the inventory from  
 16 the draft and schedule a technical meeting  
 17 where we can sit down and figure out, maybe  
 18 we don't need an entire phase two proceeding,  
 19 maybe some of these issues can be worked out,  
 20 and that would be a jump-start to our  
 21 negotiation on an interconnection agreement  
 22 with SBC because we realize that we are going  
 23 to need to do that also, and a lot of these  
 24 issues, such as maintenance, are dealt with  
 25 through interconnection agreements.

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1 Now, I'd like to spend a few  
 2 minutes talking about some of the argument  
 3 that we've heard today and some of the  
 4 arguments that SBC has raised in its written  
 5 exceptions. And, again, I want to  
 6 reemphasize that I believe that these are  
 7 just a restatement of the arguments we've  
 8 seen in the briefs and we've heard over and  
 9 over again, and we believe you got it right,  
 10 but hopefully I'm going to convince you that  
 11 you got it right.

12 With respect to whether or  
 13 not these facilities are a part of SNET's  
 14 network, the Department did a very, very  
 15 thorough review of the history of this  
 16 network and the ISNET network and the intent  
 17 to transition SBC over to this network in its  
 18 entirety. We believe that fully supports the  
 19 fact that this is part of their network.

20 Furthermore, something that  
 21 SBC did not mention today but is in the  
 22 record of this proceeding is that the HFC  
 23 facilities are HFC, hybrid fiber co-ax.  
 24 There are fiber portions of the facilities.  
 25 There are coaxial portions of the facilities.

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1 That encompasses the entire HFC network. SBC  
 2 is currently using the fiber in Project  
 3 Pronto to provide telecommunications  
 4 services.

5 So what they're attempting to  
 6 do is take this HFC network and break it down  
 7 and say, well, we're using the fiber, so  
 8 that's part of our network, but we're not  
 9 using the co-ax so that's not part of our  
 10 network. That's an artificial dismemberment  
 11 of this network, and we submit that that's  
 12 absolutely no support for their claim that  
 13 it's not a network, not part of the network  
 14 and therefore not a network element.

15 Additionally, SBC has posited  
 16 that in order to be a network element, it has  
 17 to be used for telecommunications purposes.  
 18 However, their contention is it has to be  
 19 used by them for telecommunications purposes.  
 20 We submit that the fourth circuit case is  
 21 absolutely clear on this. It has to be  
 22 capable of use and easily called into  
 23 service.

24 We know it's capable of use  
 25 because almost every cable company in the

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1 state is providing telephony services over an  
 2 HFC network. It's clearly capable of use.  
 3 And it's easily called into service. It's  
 4 there. It's on the poles. It's not wrapped  
 5 up stored in a warehouse, and we can go out,  
 6 hook up our electronics and turn it on.  
 7 It's not any big complicated  
 8 process. SBC has to do nothing. They have  
 9 to sit back, wait for our phone call. We're  
 10 going to -- we constructed the necessary  
 11 fix-ups in West Hartford and we'd like to  
 12 turn it on. We're going to turn it on on the  
 13 10th. Send us a bill. That's all they have  
 14 to do.  
 15 With respect to the evidence  
 16 on the record for a finding of impairment,  
 17 I'm a little perplexed with respect to this  
 18 argument. There's plenty of evidence on the  
 19 record. There were interrogatories. There  
 20 were interrogatory responses as to our  
 21 impairment. Under the UAPA the Department is  
 22 allowed to take notice and utilize facts and  
 23 circumstances within its expertise and  
 24 knowledge. There are all kinds of dockets  
 25 going on at the Department right now, the

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1 competition docket, the triennial review  
 2 docket.  
 3 The Department is well aware  
 4 of how costly it is to construct this  
 5 network, not only from SBC's filings when it  
 6 constructed it, but Gemini has also  
 7 constructed an HFC network in parts of the  
 8 state that the Department is aware about.  
 9 The Department is aware of issues surrounding  
 10 pole licenses and the ability to get on the  
 11 poles. These issues have been before the  
 12 Department. There's ample evidence on the  
 13 record in this proceeding and within the  
 14 Department's own specialized knowledge to  
 15 make a determination of impairment.  
 16 The argument that SBC didn't  
 17 know you were going to make a factual finding  
 18 as to impairment, I do not understand. If  
 19 you look at SBC's motion to bifurcate and the  
 20 Department's ruling bifurcating this  
 21 proceeding, part one, phase one, this  
 22 proceeding, was going to deal with unbundling  
 23 of the HFC network, the ability to unbundle.  
 24 In order to unbundle, you must make a finding  
 25 of impairment. That's a requirement.

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1 So the allegation that they  
 2 didn't know you were going to make a finding  
 3 of impairment, I don't believe is credible  
 4 because we couldn't make the unbundling  
 5 determination without the impairment finding  
 6 at the same time. And SBC must have felt  
 7 that there was enough record evidence for the  
 8 Department to make this determination because  
 9 they specifically waived the hearings in this  
 10 matter.  
 11 If they felt that there was  
 12 not enough evidence, they should have said,  
 13 no, 247(b)(a) says you must have a hearing,  
 14 and they could have brought in their  
 15 witnesses. They could have put on their  
 16 evidence with respect to technical  
 17 infeasibility. They could have  
 18 cross-examined our witnesses on our discovery  
 19 responses concerning impairment. They chose  
 20 not to do that. They made a knowing, legal  
 21 waiver of the hearing in this matter, so we  
 22 think that there's ample evidence and that  
 23 the ruling is correct.  
 24 With respect to the  
 25 contention that this is business-plan

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1 specific unbundling, SBC's interpretation of  
 2 the triennial review order misses the point.  
 3 It is not business-plan specific unbundling.  
 4 A business plan is a method of serving  
 5 customers. It is not a technology. And the  
 6 TRO makes this distinction very clearly.  
 7 A business plan is if Gemini  
 8 were to say, we want to access UNEs to  
 9 provide service only to DPUC commissioners,  
 10 that's a business plan. Or if we want access  
 11 to UNEs to provide only data service to  
 12 high-rise buildings, like the data service  
 13 providers, that's a business plan.  
 14 The TRO drops a footnote, a  
 15 footnote to paragraph 115 where it says a  
 16 business plan would be like seeking to serve  
 17 only customers named Sam; that's  
 18 uneconomical. In order to have a business  
 19 plan that is permissible to utilize unbundled  
 20 network elements, you're to seek to serve as  
 21 many customers with as many services as  
 22 possible. It doesn't discuss technology.  
 23 Gemini wants to serve  
 24 everyone it can with a full suite and range  
 25 of services. That is its business plan. Its

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1 technology happens to be HFC, which is part  
 2 of the telco's network and, we submit,  
 3 correctly subject to unbundling by the  
 4 Department.

5 And, again, I'd refer you to  
 6 the footnote to paragraph 115 of the  
 7 triennial review order because it makes it  
 8 abundantly clear.

9 With respect to the argument  
 10 that unbundling is a disincentive for SBC to  
 11 test and invest in new technologies, again,  
 12 that is one of the -- it's incorrect because  
 13 it is one of the premises of the TRO that the  
 14 FCC's ruling that they would not unbundle  
 15 advanced facilities, certain types of hybrid  
 16 networks and fiber to the home, is because  
 17 they want ILECs to invest in these  
 18 technologies without the fear that CLECs are  
 19 going to come in and say, oh, we want to use  
 20 that, too, at a discounted cost without  
 21 having put in any of the money, any of the  
 22 investment.

23 That's not the case here.  
 24 We're not talking about a new technology.  
 25 We're not talking about something that SBC

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1 has incentive to invest in. They've  
 2 abandoned it. It's rotting on the poles. It  
 3 can't even be used in its current form  
 4 because it has degenerated so much.

5 If SBC were to invest in a  
 6 future technology, a PDQ technology or  
 7 whatever is out there, and it works for them,  
 8 I'm fairly confident that the Department  
 9 would not and could not unbundle it. But if  
 10 they invest in something that's paid for by  
 11 ratepayer money, and I disagree entirely that  
 12 this network was not paid for by ratepayer  
 13 money, and I believe that you'll probably  
 14 hear from Mr. Vallee quite a bit on this  
 15 point, as this network is still in SBC's  
 16 depreciation reserve --

17 COMM. DOWNES: We're counting  
 18 on it, madam.

19 MS. JANELLE: Yes. Because  
 20 this network has been abandoned and because  
 21 it's paid for with ratepayer money, they have  
 22 no incentive to invest in it, and it is not  
 23 protected by the triennial review order. In  
 24 fact, it is this type of granular  
 25 market-specific analysis that the triennial

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1 review order wants the Department to engage  
 2 in to look at the facts and circumstances of  
 3 this network, and to make a finding that in  
 4 this market, because of these circumstances,  
 5 it's subject to unbundling. Otherwise, it  
 6 sits there and it rots, and that's not good  
 7 for anybody. It's not good for SBC; it's not  
 8 good for us, and it's not good for  
 9 Connecticut consumers.

10 COMM. DOWNES: Well, God  
 11 knows our analysis has certainly been  
 12 granular.

13 Back up for a moment here,  
 14 and I realize you were not an engineer, but  
 15 just talk to me a little bit more about this  
 16 point about the fiber and the co-ax. I  
 17 believe I heard you a little bit earlier  
 18 saying that SBC is, in fact, using some  
 19 portions of the system, namely, the fiber  
 20 portions. Just talk to me a little bit about  
 21 this. Is this a situation where in some  
 22 areas fiber is carrying the signal and then  
 23 it turns over to co-ax, or are these  
 24 literally side by side on the same units?  
 25 And I will give you the graceful escape. I

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1 realize you are not a professional engineer,  
 2 and so --

3 MS. JANELLE: I was going to  
 4 say I'm going to heavily caveat my answer  
 5 with the fact that I was an English/Russian  
 6 major in college --

7 COMM. DOWNES: There you go.

8 MS. JANELLE: -- so we're  
 9 going to do this real simple kindergarten --

10 COMM. DOWNES: Good.

11 THE CHAIRPERSON: I noted you  
 12 didn't multiply ten times a thousand and  
 13 you're saying now that --

14 MS. JANELLE: Thank you,  
 15 because my math is equally as bad, the  
 16 embarrassment of giving the wrong answer.

17 COMM. DOWNES: Well, it's  
 18 even more embarrassing to have to ask the  
 19 question. It demonstrates my ignorance on  
 20 this, but perhaps you can help me out, in any  
 21 event.

22 MS. JANELLE: My  
 23 understanding -- and, again, this is from our  
 24 discussions with SBC, the discussions we had  
 25 across the street in Superior Court, with

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1 Department staff and with Judge Levine -- my  
 2 understanding is that -- and actually I think  
 3 SBC submitted a diagram. Is there a diagram  
 4 of the facilities? I think there is a  
 5 diagram in the record in these proceedings.  
 6 My understanding is you have the co-ax wire  
 7 here. The fiber is essentially sort of wound  
 8 around the co-ax wire, so they're using the  
 9 fiber in their Project Pronto to transport  
 10 telecommunications services, and in fact when  
 11 we discussed the facilities that were being  
 12 removed and discarded, we talked about the  
 13 necessity of unwinding the fiber in some  
 14 cases because it was being used, and it came  
 15 to light that where they were using that  
 16 fiber that was wound around, they weren't  
 17 throwing away those portions of the network.  
 18 THE CHAIRPERSON: I seem to  
 19 recall from the original SPV case that that  
 20 is all encased inside a large sheath, and it  
 21 is wound around and encased inside a sheath.  
 22 Is that correct, Mr. Andrasik?  
 23 MR. ANDRASIK: Commissioner,  
 24 in some cases the fiber is overlashed on top  
 25 of the -- the co-ax is overlashed on top of

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1 the fiber. Other cases, it's really  
 2 separate. That does not necessarily mean or  
 3 have any impact on how we've used it. We've  
 4 always said we've used the existing fiber  
 5 since the early ISNET days to provide  
 6 services that were in need of optical  
 7 facilities. We've continued to repurpose  
 8 some of the HFC fiber to provide telephony  
 9 facilities. As Mr. Moreira demonstrated on  
 10 the map, fiber to RT's, remote terminals, is  
 11 a frequent use of how we repurpose the fiber.  
 12 THE CHAIRPERSON: John  
 13 Andrasik is SNET's technical geek in charge  
 14 of this stuff.  
 15 MS. JANELLE: So I would  
 16 agree that based on what Mr. Andrasik just  
 17 said that they're using a part of this  
 18 network, so the claim that it's not part of  
 19 their network I fail to understand. And I  
 20 hope that answers your question,  
 21 Commissioner.  
 22 COMM. DOWNES: Yes, ma'am.  
 23 That's very fine. Thank you.  
 24 MS. JANELLE: May I continue?  
 25 COMM. DOWNES: Please.

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1 THE CHAIRPERSON: Please.  
 2 MS. JANELLE: With respect to  
 3 the argument that the draft decision  
 4 impermissibly relies on the UNE remand order,  
 5 we think that the footnote cited by  
 6 Mr. Moreira in the draft decision saying that  
 7 the Department disagrees with the contention  
 8 that this was fully vacated and remanded is  
 9 an accurate footnote. I would submit to you  
 10 that the easiest way to fix this issue, if it  
 11 is an issue, is to go to the TRO and replace  
 12 your UNE remand order cites with TRO cites,  
 13 because although -- although this impairment  
 14 test was vacated and remanded, it was vacated  
 15 and remanded not because of what the test  
 16 was, but because the FCC -- excuse me -- the  
 17 Court said you didn't do enough of a market  
 18 specific analysis and a granular analysis,  
 19 and you relied too heavily on costs. So it  
 20 went back to the FCC. And the FCC issued the  
 21 TRO, and if you look at the impairment test  
 22 set forth by the TRO, it's substantially the  
 23 same except that now you can't rely so  
 24 heavily on costs, you've got to rely a little  
 25 more on the other factors, and there's got to

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1 be this granular, market-specific analysis.  
 2 The Department has just  
 3 performed the granular, market-specific  
 4 analysis, and I think you can find parallel  
 5 paragraphs in the TRO that state exactly what  
 6 SBC is claiming the Department is relying on  
 7 the UNE remand order for.  
 8 With respect to we can't  
 9 unbundle this because we don't know what to  
 10 call it, it's not a loop, it's not a switch,  
 11 it's not all of the other technical terms,  
 12 you can call it anything you want. You can  
 13 call it HFC network. You can use Attorney  
 14 Moreira's term and call it a quasi-loop. The  
 15 fact is it functions as a loop, and just  
 16 because HFC network is not on the FCC's list  
 17 of things nationally that can be unbundled  
 18 doesn't mean that this Department cannot  
 19 unbundle it and doesn't mean it's not subject  
 20 to unbundling.  
 21 It was very adequately  
 22 briefed by both parties that the Department  
 23 has independent statewide jurisdiction to add  
 24 network elements to the list. That was  
 25 admitted by SNET in its District Court

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1 complaint that this Department took  
 2 administrative notice of.  
 3 Call it whatever you want.  
 4 It doesn't matter to us. But we believe that  
 5 it functions as quasi-loop and therefore this  
 6 Department can unbundle it.  
 7 And I think that's all that I  
 8 have. I didn't speak nearly as long, but I  
 9 just want to --  
 10 MR. MOREIRA: We win.  
 11 MS. JANELLE: Not yet. I  
 12 just want to sum up by saying --  
 13 COMM. DOWNES: No, this is  
 14 not trial by ordeal, even though it may seem  
 15 that way.  
 16 MS. JANELLE: I just want to  
 17 sum up by saying that notwithstanding all of  
 18 the rebutting of all of these arguments, we  
 19 would like the Department to focus on the  
 20 draft decision's requirements with respect to  
 21 the cost of service, the inventory and the  
 22 OSS because those are fatal to Gemini and we  
 23 believe any other competitor coming in to use  
 24 this network. You're correct on the facts,  
 25 you're correct on the law, you're correct to

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1 unbundle in the way that you have. We think  
 2 that this decision is fully sustainable on  
 3 appeal. However, it will be a hollow  
 4 decision if these costs that really are a  
 5 barrier to entry are imposed on a competitor  
 6 that wants to utilize this network.  
 7 And I'd be happy to answer  
 8 any other questions you have.  
 9 THE CHAIRPERSON: I think  
 10 you've done fine. Thank you.  
 11 COMM. DOWNES: May I just  
 12 torture her briefly?  
 13 THE CHAIRPERSON: I tried to  
 14 help you out. I really did.  
 15 COMM. DOWNES: I know, I  
 16 know.  
 17 MS. JANELLE: Thank you,  
 18 Commissioner. I appreciate it.  
 19 COMM. DOWNES: And you were  
 20 so close.  
 21 Look, I have to confess to  
 22 you that I am -- for me I guess the  
 23 disconnect on this is why wouldn't Gemini  
 24 want to just purchase this facility already?  
 25 I mean, you know, I listened very carefully

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1 as you talked to us a little bit earlier  
 2 about leasing the facility, making the  
 3 upgrades, doing the various interconnection  
 4 and other kinds of things you've got to do,  
 5 and I believe at one point you also said that  
 6 Gemini also runs some other HFC facilities --  
 7 MS. JANELLE: That it has  
 8 constructed on its own, that's correct,  
 9 Commissioner.  
 10 COMM. DOWNES: So I guess  
 11 I'm -- I guess I'm just a little bit  
 12 mystified, and there's probably a perfectly  
 13 obvious reason that I'm not seeing, but  
 14 perhaps you could just talk to me a little  
 15 about that.  
 16 MS. JANELLE: Certainly.  
 17 COMM. DOWNES: Wouldn't it  
 18 make more sense just to buy the darn thing  
 19 already and --  
 20 MS. JANELLE: Well, it would,  
 21 and quite frankly the answer is we want to  
 22 buy it.  
 23 COMM. DOWNES: Oh.  
 24 MS. JANELLE: We would love  
 25 to buy it. We did entertain negotiations

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1 with SBC, and without disclosing anything  
 2 that went on in those negotiations,  
 3 ultimately we believe that the price that we  
 4 were offered, which was in the very high  
 5 multimillion dollars, represents multiple  
 6 times over what this abandoned, decrepit,  
 7 degenerated network is worth. And there was  
 8 absolutely no movement on that price from  
 9 SBC.  
 10 And this issue was revisited  
 11 when we were before Judge Levine because he  
 12 said exactly the same thing, and he put the  
 13 two of us in a room together and he said, You  
 14 want it; you don't want it; buy it. And, you  
 15 know --  
 16 THE CHAIRPERSON: Judge  
 17 Levine said that?  
 18 MS. JANELLE: Yes.  
 19 THE CHAIRPERSON: I'm  
 20 surprised.  
 21 MS. JANELLE: We spent a full  
 22 day --  
 23 COMM. DOWNES: Be careful  
 24 now.  
 25 MS. JANELLE: -- in

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1 negotiations with Department staff and the  
2 Assistant Attorneys General present, and  
3 there was no movement on that number, and as  
4 far as we're concerned the number is  
5 outrageously inflated, and I don't know if  
6 it's designed to prevent a competitor from  
7 buying the network, but certainly we don't  
8 believe anyone will at that price. Certainly  
9 we will not.  
10 COMM. DOWNES: And I will  
11 give your friend here an opportunity to rebut  
12 in a moment here.  
13 MR. MOREIRA: I do speak out  
14 of turn.  
15 COMM. DOWNES: Well, we'll  
16 just allow it this one time.  
17 MR. MOREIRA: We are curious  
18 to see what they think it's worth because  
19 they never countered the offer, so it is  
20 interesting.  
21 MS. JANELLE: Well, we think  
22 we did counter in Superior Court, but that's  
23 beside the point. The fact of the matter  
24 is --  
25 COMM. DOWNES: We're kind of

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1 enjoying the colloquy here.  
2 MS. JANELLE: Maybe we can  
3 settle this now.  
4 MR. MOREIRA: Again, I'll  
5 listen to the number. I'm just waiting for  
6 it.  
7 MS. JANELLE: The fact of the  
8 matter is that the number that we were told  
9 that there was absolutely going to be no  
10 movement on was so astronomically high as to  
11 prevent even consideration of it. Quite  
12 frankly, there was no way we could pay for it  
13 and absolutely no way we could ever get  
14 financing for it at that high of a number.  
15 COMM. DOWNES: Thank you,  
16 ma'am. I appreciate it.  
17 MS. JANELLE: Thank you very  
18 much.  
19 THE CHAIRPERSON: Thank you.  
20 Attorney Vallee.  
21 MR. VALLEE: Yes, thank you,  
22 Commissioner. Good morning -- good  
23 afternoon, Commissioners.  
24 COMM. DOWNES: Good  
25 afternoon, sir.

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1 MR. VALLEE: Commissioner  
2 Downes, I was present with Judge Levine  
3 asking that same question --  
4 COMM. DOWNES: Yes.  
5 MR. VALLEE: -- and there was  
6 an interesting answer, and I don't know the  
7 answer either, but there was not a meeting of  
8 the minds.  
9 COMM. DOWNES: Yes, that  
10 seems apparent at this point.  
11 MR. VALLEE: Yes, I'm afraid  
12 it was. It is a very good question, but you  
13 know you could flip the question and ask the  
14 question, why doesn't SNET want to lease it,  
15 because they certainly have the opportunity.  
16 The Department has just issued a decision  
17 saying go ahead and do it, it's legal.  
18 COMM. DOWNES: Well, I just  
19 haven't gotten Mr. Moreira in front of me --  
20 MR. VALLEE: We'll have to  
21 get him back up here.  
22 COMM. DOWNES: -- to ask him  
23 part two so --  
24 MR. VALLEE: Give him a shot.  
25 That's a good question, and I really don't

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1 have the answer to that. There was clear  
2 financial -- I mean, there were numbers  
3 battered around. I don't remember them, but  
4 they clearly were quite divergent.  
5 Because the OCC's position is  
6 that the draft decision is terrific, and it  
7 is the right decision, it's legal, and it  
8 makes a lot of sense, it advances public  
9 policy, all of which is good, all of which is  
10 a win-win.  
11 THE CHAIRPERSON: You're  
12 scaring me.  
13 COMM. DOWNES: You old  
14 flatterer, you.  
15 MR. VALLEE: I've got the  
16 apples out front.  
17 COMM. DOWNES: Yeah.  
18 MR. VALLEE: Because it  
19 should be a win for SNET. That's why that  
20 question is out. That's why it's an  
21 important question.  
22 Right now it's not generating  
23 any revenue, and if you light it up or do  
24 whatever it does, you just sit back and watch  
25 the money come in, and what's wrong with

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1 that? Right now it's actually a cost  
 2 because, as we know, they're stripping it  
 3 down off the poles wherever they can find it,  
 4 wherever it gets in their way. Well, that's  
 5 a cost. You roll up the truck and the guy  
 6 has to do all this stuff.

7 So the Department has  
 8 essentially said, Waste not, want not, and it  
 9 seems like a pretty good deal, so that's  
 10 really the question.

11 COMM. DOWNES: Well, we're  
 12 glad we made somebody happy.

13 MR. VALLEE: That's right.  
 14 We're happy. We're happy here. Consumers  
 15 should be happy because that's a win-win for  
 16 them, too.

17 MS. JANELLE: Us too.

18 MR. VALLEE: SNET has a win.  
 19 They have revenues coming in. Consumers are  
 20 obviously going to benefit from the  
 21 competition and all the things that we know  
 22 accrue from competition, and Gemini is here,  
 23 you know, hat in hand petitioning the  
 24 Department, Come on, come on, what about it?  
 25 And you say, Okay, good idea, go ahead and do

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1 it.

2 So we certainly hope there's  
 3 no federal litigation or any other kind of  
 4 litigation, that we would just move forward  
 5 to a practical resolution of this thing.

6 The public policy I'd like to  
 7 talk about for a moment, the TRO has been  
 8 mentioned a few times, the triennial review  
 9 order, and there was a distinct public policy  
 10 that was enumerated by that, and SNET has  
 11 claimed, Well, you did it all wrong. They  
 12 went through all the piles of paper and  
 13 wandering around and drawings, too, which are  
 14 very pretty.

15 THE CHAIRPERSON: Very  
 16 impressive.

17 MR. VALLEE: But the public  
 18 policy was clear. Congress essentially said  
 19 and the FCC has now put it in writing with  
 20 the TRO, We'd like broadband to happen in  
 21 this country. It's important to us. Let's  
 22 do that. Let's all do that together.

23 We need economic incentives,  
 24 which I think SNET talked about, certainly  
 25 Gemini is aware of.

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1 So the TRO essentially says,  
 2 Broadband, competitors, you don't get a crack  
 3 at that. You get to play with the old  
 4 network. If you want, go ahead, you can  
 5 lease that. SNET has to lease it, and you  
 6 get to lease it, and we get to use it, and  
 7 you're all happy with that. But that new  
 8 stuff, you don't have to lease that. That  
 9 incents SNET and companies like it, the other  
 10 RBOCs, to spend their money to build that  
 11 thing out.

12 And the Department looked at  
 13 this technology where the drawing is, the red  
 14 part, as opposed to the blue part, which is  
 15 really what that is about, and said, you  
 16 know, the TRO doesn't talk about this thing  
 17 because it's unique. This is the only RBOC  
 18 that still owns this type of stuff. The TRO  
 19 talked about really advanced stuff, fiber to  
 20 the curb and all of that good stuff, and it  
 21 talked about twisted pair copper, and we've  
 22 just talked about that difference, but this  
 23 thing is -- what is this? It's in the  
 24 middle. So the Department had to make a  
 25 decision about what is it and where does it

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1 belong?

2 And the OCC believes this is  
 3 the right decision because it's still sitting  
 4 on the poles all across Connecticut, all of  
 5 that red stuff over there, and it isn't being  
 6 used. It's being stripped down by a company  
 7 that has written it off, and we will talk  
 8 about who paid for it. But it should be  
 9 used. It can be used. We have a willing and  
 10 able lessee -- is that what it is? -- ready  
 11 to do it, and the Department has reached the  
 12 right decision which is, yeah, do it.

13 Let me do that money thing.  
 14 I wrote a quick note when you asked that  
 15 question. It was a really good question.

16 COMM. DOWNES: Yes. I'm  
 17 tingling with anticipation.

18 MR. VALLEE: I can imagine.  
 19 I'm sure SNET is, too, taking notes  
 20 copiously.

21 It was the money from  
 22 ratepayers is basically the thing. I seem to  
 23 remember and I'm sure those of us who were  
 24 there in those days with video dialtone and  
 25 all of that good stuff can remember there was



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1 some kind of 50/50 split that I remember. We  
2 had six fiber lines. Three of them were --  
3 what was it, two were going to do this and  
4 two were going to do that -- John will  
5 correct me if I'm wrong -- and then there  
6 were two spares, but in any case you had six  
7 of them. When we cut them in half, there  
8 were three on either side of this thing, and  
9 50 percent of the cost of putting this thing  
10 together ISNET was going to be paid by  
11 telephony ratepayers as opposed to potential  
12 CATV or cable or cable people.  
13 Now we've got the RBOC  
14 fantasy, as I like to think of it, of  
15 alternative regulation changed everything,  
16 and the thing it most seems to have changed  
17 is that ratepayers disappeared. They're  
18 like, hello, where -- there are no ratepayers  
19 here. We don't have ratepayers anymore. We  
20 only have shareholders. We only have our  
21 money.  
22 There's no rate of return  
23 case. There's no rate case. We don't talk  
24 about ratepayers and how much we spent,  
25 ratepayers.

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1 Okay. But who pays the bills  
2 every month? Shareholders? Well, maybe they  
3 do, but not as shareholders. And where does  
4 the revenue come from? It comes from rate --  
5 oh, we can't talk about ratepayers.  
6 They didn't do a stock thing  
7 that said -- they didn't go to Wall Street  
8 and say, Hey fellows, we really want to do  
9 this ISNET thing, give us six billion dollars  
10 or four billion dollars or bunches of  
11 billions of dollars. They said, We're going  
12 to pay for it as we go. It's going to be  
13 part of our improvement plant, and that's how  
14 it worked, and that's the answer.  
15 So, yeah, they wrote it off,  
16 and yes, the Department said when you write  
17 it off, whatever is remaining is a  
18 shareholder expense. I'm cool with that. So  
19 that's the business there.  
20 Now, we had the whole  
21 business about the barren plane and the two  
22 railroad tracks, A and B, narrow and wide.  
23 Why the new one, the broadband is narrow, is  
24 one of the things I'm worried about, but  
25 maybe we'll hear about that later. Maybe

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1 there will be a new drawing about that, the  
2 two parallel railroad tracks.  
3 But the thing that we've got  
4 to recognize here is that the draft decision  
5 goes into the history, as Ms. Janelle pointed  
6 out, and I think the history in the draft  
7 decision is correct. The SNET rewrite is a  
8 little bit off the track.  
9 So what happened was they set  
10 out to build a substitute network, which we  
11 talked about. That's the red network. And  
12 it was going to completely substitute for  
13 copper twisted pair. That was the deal.  
14 That's what we heard. We heard, Give us the  
15 money, and we will give you all kinds of  
16 crazy services you're going to love, and as I  
17 remember the number it was 70 percent more  
18 productivity off this thing. Squirrels  
19 weren't going to eat it, the rain didn't like  
20 it, it was going to be unbelievable. It even  
21 fixed itself. It was self-healing. I love  
22 that. Okay.  
23 But somewhere along the  
24 track, we were riding along with the  
25 locomotive and all of a sudden we came off

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1 the track, and we derailed it, and what was  
2 that? Was that really because it didn't  
3 work? I don't think so, because it works.  
4 They use it. They're in here begging for it.  
5 The cable T.V. people, there's some of them  
6 here, too; they use it. But it doesn't work.  
7 Okay.  
8 So what really happened?  
9 What really happened was they suddenly  
10 discovered, whoa, the cable guys are running  
11 like maniacs, upgrading to 750-megahertz so  
12 we can do telephony, and we're going to pay  
13 for it, and they did. Okay. Well, wait a  
14 minute. We're losing that race but we --  
15 THE CHAIRPERSON: I seem to  
16 recall it repowering the network.  
17 MR. VALLEE: Powering the  
18 network was a problem, but could they have  
19 done it? You betcha. They could have done  
20 it. They didn't want to do it. They wanted  
21 to put the power down on the communications  
22 gain. You're right, that --  
23 THE CHAIRPERSON: I recall  
24 that.  
25 MR. VALLEE: That was a

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1 problem, and Lucent did withdraw from the  
 2 business. That's a problem, too. So how  
 3 come they're doing it? That's not a problem.  
 4 That one they got fixed.  
 5 What really happened was DSL  
 6 was sitting there looking sweet and pretty  
 7 and just said, Come and use me. I'd be a lot  
 8 cheaper for you. In a nutshell that's how it  
 9 worked.  
 10 And how do they provide  
 11 broadband today? DSL. So they're in  
 12 competition with the cable people and it's  
 13 working great. God love 'em. But that's the  
 14 answer. That's why track B was cut off and  
 15 why it's sitting up on those poles out across  
 16 Connecticut.  
 17 So it was a substitute  
 18 network. It was going to totally take --  
 19 that was going to be what was going to be  
 20 used. You would pick up the phone and say  
 21 "Hi, Mom" through HFC.  
 22 So, I mean, that's an  
 23 important issue especially in terms of the  
 24 legal analysis because this was not a trial.  
 25 Is Project Pronto a trial? That would be a

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1 question to ask the company. Is Project  
 2 Pronto a trial? The answer has got to be no.  
 3 That is our future network. That's what  
 4 Congress told us to do. That's what the FCC  
 5 has told us to do repeatedly. We want  
 6 broadband; Project Pronto. Read it in the  
 7 annual report. That's what we're doing.  
 8 We're using the fiber, the "F" in the HFC,  
 9 and we're using it right now. We're using it  
 10 right now. It's not dead. It's not quiet.  
 11 It's generating revenue. It's being used to  
 12 carry traffic.  
 13 So trial schmile, it's not --  
 14 it was real. It was to be the --  
 15 THE CHAIRPERSON: The  
 16 transcript needs to know, how do you spell  
 17 "schmile"?  
 18 MR. VALLEE: There's an  
 19 expert right here. I'll defer to her.  
 20 COMM. DOWNES: It's okay.  
 21 Use your best phonetics.  
 22 MR. VALLEE: I'll wrap up  
 23 real quickly. You're going to hear more  
 24 today, I'm sure.  
 25 Financial hurdles. We've got

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1 a couple of hurdles. We've got the financial  
 2 hurdle; we've got the technical hurdle. This  
 3 is an RBOC thing again, another RBOC fantasy.  
 4 Oh, network integrity, we can't do whatever  
 5 it is you just told us. They've been doing  
 6 it for fifty years. Okay.  
 7 As for spending money on  
 8 Gemini, you're going to do a cost of service  
 9 study, you talked about it, you put  
 10 deadlines, you've got all this good stuff,  
 11 and you're not legally bound to do so. Where  
 12 does -- where did all the costs for OSS come  
 13 from in the first place? It's folded into  
 14 the cost of service study. That's how it's  
 15 always been done. When these jokers pay a  
 16 price, oh, it's ten dollars a mile, whatever  
 17 the number is, fine, inside the ten dollars  
 18 is to pay for the OSS. This is not new. So  
 19 I'm not sure why --  
 20 COMM. DOWNES: You meant  
 21 "jokers" in the very nicest possible way.  
 22 MR. VALLEE: I'm sorry, yes.  
 23 I love jokers, too.  
 24 COMM. DOWNES: I'm just  
 25 watching the colloquy behind you.

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1 MR. VALLEE: You mean the  
 2 darts are not all going to this side?  
 3 COMM. DOWNES: I hope you all  
 4 appreciate the fact that we're trying to make  
 5 these hearings more entertaining.  
 6 THE CHAIRPERSON: You saw the  
 7 electric response.  
 8 COMM. DOWNES: Really,  
 9 really. I understand why Jennifer prefers to  
 10 be here now. I get it.  
 11 THE CHAIRPERSON: It's the  
 12 Commissioner; that's why.  
 13 COMM. DOWNES: Probably.  
 14 MR. VALLEE: There's two  
 15 things to think about. The first is what  
 16 time do you pay for the OSS? I'm not sure  
 17 that -- I think Gemini is correct, that the  
 18 scheme that's in the draft decision may not  
 19 be the best way. I'd suggest that in phase  
 20 two, we do the cost-of-service study and  
 21 inside that an OSS.  
 22 The other is will SNET lose  
 23 money? The RBOCs are always, Oh, we're  
 24 getting killed on this thing. We're under  
 25 water. This is terrible. This is our cost.